

**3536.670 Government rights to plans, specifications, and drawings.**

All solicitations and contracts for architect-engineer services or for construction involving architect-engineer services, except those involving "standard types of construction", shall contain the clause at 3552.227-70, Government Rights, as prescribed at 3527.304-3(b).

## **PART 3537—SERVICE CONTRACTING**

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7662, Mar. 2, 1990, unless otherwise noted.

### **3537.000 Scope of part.**

This part implements FAR part 37 and provides additional Commission policies and procedures for the acquisition of personal and nonpersonal services, including advisory and assistance services.

### **Subpart 3537.1—Service Contracts—General**

#### **3537.102 Policy.**

(a) The Commission's policy regarding the contracting out of commercial services is set forth at 3507.301.

#### **3537.104 Personal services contracts.**

(b) Authority for the acquisition by contract of the personal services of experts and consultants is found at 5 U.S.C. 3109 which provides that, when authorized by an appropriation or

other statute, the head of an agency may acquire by contract the temporary (not to exceed one year) or intermittent services of experts or consultants. For the purpose of this section, the terms "experts" and "consultants" are not interchangeable. Consequently, their meanings are distinguishable from the meaning of the collective term "Individual experts and consultants" at FAR 37.203(a). As used herein, an "expert" is an individual who is a recognized professional or highly skilled practitioner normally used to perform or supervise an operating function, rather than to provide advisory or consulting services. A "consultant", as used herein, is an individual possessing special, current knowledge or skill who primarily serves in an advisory capacity in a particular field, rather than in the performance or supervision of an operating function. Acquiring the personal services of individual experts or consultants shall be subject to the limitations applicable to advisory and assistance services at FAR 37.202(c). In addition, the services of individual experts and consultants shall be acquired through personal services contracts only—

(1) When the services required cannot be obtained by appointment in accordance with standard Commission personnel procedures, and

(2) If the nature of the duties to be performed is temporary (not more than one year) or intermittent (not cumulatively more than 130 days in one year). Accordingly, no such contract shall be entered into for longer than one year at a time.

#### **3537.104-70 Procedures.**

Requests for the acquisition of personal services should include:

(a) A description of the services to be performed;

(b) Name and address of the person or firm;

(c) Background material to show the unique qualifications of such person or firm to accomplish the requirement;

(d) Place where the duties are to be performed and the period of service;

(e) The estimated cost; and

(f) Determinations that:

(1) It is not feasible to obtain personnel with the necessary skills

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through standard Commission personnel appointment procedures;

(2) A nonpersonal services contract is not practicable; and

(3) Existing staffing is inadequate to furnish the services.

### Subpart 3537.2—Advisory and Assistance Services

#### 3537.200 Scope of subpart.

This subpart provides additional policy and management controls for the acquisition of personal and nonpersonal advisory and assistance services.

#### 3537.202 Policy.

(d) The acquisition of advisory and assistance services shall conform to the Competition in Contracting Act of 1984. Preference shall, however, be given to sources located in the Republic of Panama when the services are available as required and are comparable in quality and price to those which may be obtained from other sources (see part 3570). However, see subpart 3503.6 concerning contracts with current or former Commission employees.

#### 3537.204 Exclusions.

In addition to the exclusions or exemptions identified at FAR 37.204, the services of arbitrators for the resolution of labor disputes are exempted from the definition of advisory and assistance services. As authorized by section 7121 of the Federal Service Labor-Management Relations Act, 5 U.S.C. 7121, the procedure for the contracting of arbitrators shall be governed by the negotiated grievance procedure set forth in the individual collective bargaining agreements between the Commission and the various certified representatives (i.e., unions).

#### 3537.206 Requesting activity responsibilities.

(c) Requests for the acquisition of advisory and assistance services shall include the documentation required at FAR 37.206 (a), (b), and (d), and shall be prepared by the initiating bureau director or head of independent unit and forwarded to the Administrator for approval, through, in turn, the Personnel Director; General Counsel; Chief Finan-

cial Officer; and the General Services Director for their review and concurrence. Before the proposal is routed to the Administrator, the General Services Director will add the cognizant contracting officer's determination as to whether or not the requested acquisition constitutes advisory and assistance services as described in FAR subpart 37.2. As mandated by FAR 37.207, the contracting officer's determination shall be final.

[55 FR 7662, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

#### 3537.206-70 Procedures.

(a) When a request has been approved pursuant to 3537.206(c), the initiating bureau director or head of independent unit shall—

(1) Forward all papers to the cognizant contracting officer for processing the contract action. If not already included in the request for approval, the forwarding official shall provide the contracting officer with a work statement that is specific and complete, including: a detailed description of services to be performed; the place where the services are to be performed; the period of performance; the names and addresses of potential contractors (if applicable); and any other information the contracting officer considers to be pertinent.

(2) Coordinate with the Director, Office of Executive Administration or the contracting officer, as applicable, to obtain certification as a Panama Canal Commission designated contractor, entry/exit permits, identification cards, and any other required legal documents.

(3) Prepare replies to all inquiries from the General Accounting Office, the Office of Management and Budget, and the Congress, in coordination with the Personnel Director, Chief Financial Officer, General Counsel and the contracting officer, as may be necessary.

(b) At the conclusion of the contract, the initiating bureau director or head of independent unit shall furnish to the contracting officer the written evaluation required at FAR 37.205.

#### 3537.270 Duration.

No contract for advisory and assistance services shall be entered into for